



B. McKay Mignault
B. McKay Mignault, Chief Bankruptcy Judge
United States Bankruptcy Court

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

In re:

DAVID A. LEVINE and
MONICA L. LEVINE,

Debtors.

THOMAS FLUHARTY, Trustee of the
Bankruptcy Estate of David and Monica
Levine, and
MARTIN SHEEHAN, Trustee of the
Bankruptcy Estate of Geostellar, Inc.,

Plaintiffs,

v.

PHILADELPHIA INDEMNITY
INSURANCE COMPANY and
DAVID A. LEVINE,

Defendants.

Case No. 3:19-bk-01048

Chapter 7

Adversary No. 3:21-ap-00019

ORDER

Philadelphia Indemnity Insurance Company (“PIIC”) seeks dismissal of the complaint against it filed by Thomas Fluharty and Martin Sheehan, Chapter 7 trustees of respective bankruptcy estates identified above (together, the “Plaintiffs”). Among other arguments, PIIC contends that neither trustee possesses standing to make a claim against it under the policy at issue—a directors & officers policy covering Mr. Levine for claims arising during his former service as a director and officer of Geostellar, Inc. The Plaintiffs assert they each possess standing,

in slightly different ways, from the operation of § 541 of the Bankruptcy Code, which defines property of the bankruptcy estate.

Notably, PIIC also raised standing in opposition to a motion the Plaintiffs filed seeking a preliminary injunction. On October 28, 2021, the court convened a telephonic hearing and ruled for PIIC, largely based upon an analysis of the respective Plaintiffs' lack of standing. The court perceives no way in which its analysis in that regard should differ in resolving the extant motion to dismiss.

Therefore, the court does hereby

ORDER that PIIC's motion to dismiss (Doc. No. 19), filed September 13, 2021, be and hereby is GRANTED. This adversary proceeding is hereby DISMISSED.

Notice Recipients

District/Off: 0424-3

User: ad

Date Created: 3/21/2022

Case: 3:21-ap-00019

Form ID: pdfdoc

Total: 12

Recipients of Notice of Electronic Filing:

pla	Thomas Fluharty	wv12@ecfbis.com
aty	Brian Richard Blickenstaff	bblickenstaff@turnerjohns.com
aty	Debra Tedeschi Varner	dtvarner@vv-wvlaw.com
aty	Martin P. Sheehan	sheehanparalegal@wvdsi.net
aty	Patrick S Cassidy	pcassidy@walslaw.com
aty	Thomas H. Fluharty	THFDEBTATTY@aol.com
aty	Timothy F. Cogan	tfc@walslaw.com

TOTAL: 7

Recipients submitted to the BNC (Bankruptcy Noticing Center):

pla	Martin P. Sheehan	Sheehan & Associates, PLLC	1 Community St., Ste 200	Wheeling, WV 26003
dft	Philadelphia Indemnity Insurance Company	One Bala Plaza	Suite 100	Bala Cynwyd, PA 19004
dft	David Andrew Levine	2426 Steamboat Run Road	Shepherdstown, WV 25443	
aty	David Grassmick	Cope Ehlers PC	135 South LaSalle Street	Suite 3050 Chicago, IL 60603
ust	United States Trustee	2025 United States Courthouse	300 Virginia Street East	Charleston, WV 25301

TOTAL: 5